

# **ATTACHMENT 74**

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Page 1

1 UNITED STATES DISTRICT COURT  
2 EASTERN DISTRICT OF PENNSYLVANIA  
3

4 -----  
5 IN RE: PROCESSED EGG PRODUCTS MDL No. 2002  
6 ANTITRUST LITIGATION 08-md-02002  
7 -----

8 THIS DOCUMENT RELATES TO:  
9 ALL ACTIONS  
10 -----

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12

13 VIDEOTAPED 30(b)(6) DEPOSITION

14 OF MICHAEL FODOS, INC.

15 BY MARK WESTPHAL

16 AND

17 MARK WESTPHAL

18 INDIVIDUALLY

19 Thursday, April 10, 2014

20 9:05 a.m.  
21  
22  
23  
24

25 Reported by: Dana Anderson-Linnell

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<p style="text-align: right;">Page 2</p> <p>1 DEPOSITION OF MARK WESTPHAL taken on Thursday,  2 April 10, 2014, commencing at 9:05 a.m. at the  3 offices of Stinson, Leonard, Street, 150 South Fifth  4 Street, Suite 2300, Minneapolis, Minnesota, before  5 Dana S. Anderson-Linnell, a Shorthand Reporter and  6 Notary Public in and of the State of Minnesota.  7 *****  8  9 APPEARANCES  10  11 On Behalf of the Direct Purchaser Plaintiff  12 Class:  13 Lee Turner Friedman, Esquire  14 QUINN, EMANUEL, URQUHART &amp; SULLIVAN, LLP  15 51 Madison Avenue, 22nd Floor  16 New York, New York 10010  17 Phone: 212.849.7000  18 Email: leefriedman@quinnemanuel.com  19  20  21 (Appearances continued on the next page.)  22  23  24  25</p>	<p style="text-align: right;">Page 4</p> <p>1 APPEARANCES (continued):  2  3 On Behalf of Michael Foods Inc.:  4 William L. Greene, Esquire  5 STINSON LEONARD STREET  6 150 South Fifth Street, Suite 2300  7 Minneapolis, Minnesota 55402  8 Phone: 612.335.1568  9 Email: william.greene@leonard.com  10  11  12 On Behalf of United Egg Producers and  13 United States Egg Marketers:  14 Whitney R. Redding, Esquire (via telephone)  15 PEPPER HAMILTON, LLP  16 3000 Two Logan Square  17 Eighteenth and Arch Streets  18 Philadelphia, Pennsylvania 19103-2799  19 Phone: 215.981.4245  20 Email: reddingw@pepperlaw.com  21  22  23 (Appearances continued on next page.)  24  25</p>
<p style="text-align: right;">Page 3</p> <p>1 APPEARANCES (continued):  2  3 On Behalf of the Direct Action Plaintiffs:  4 James T. Malysiak, Esquire  5 JENNER &amp; BLOCK, LLP  6 353 North Clark Street  7 Chicago, Illinois 60654-3456  8 Phone: 312.222.9350  9 Email: jmalysiak@jenner.com  10  11  12 On Behalf of the Indirect Purchaser Plaintiffs:  13 Keith D. Essenmacher, Esquire  14 LOVELL, STEWART, HALEBIAN, JACOBSON, LLP  15 500 Fifth Avenue  16 New York, New York 10110  17 Phone: 212.608.1900  18 Email: kessenmacher@lshllp.com  19  20  21 (Appearances continued on the next page.)  22  23  24  25</p>	<p style="text-align: right;">Page 5</p> <p>1 APPEARANCES (continued):  2  3 On Behalf of Michael Foods Inc.:  4 Carrie M. Anderson, Esquire (via telephone)  5 WEIL, GOTSHAL &amp; MANGES, LLP  6 1300 Eye Street, NW, Suite 900  7 Washington, District of Columbia 20005  8 Phone: 202.682.7231  9 Email: carrie.anderson@weil.com  10  11  12 On Behalf of the Direct Purchaser Plaintiff  13 Class:  14 Cory A. Greenbaum, Esquire  15 BERNSTEIN LIEBHARD, LLP  16 10 East 40th Street  17 New York, New York 10016  18 Phone: 212.779.1414  19 Email: cgreenbaum@bernlieb.com  20  21  22 ALSO PRESENT: Carolyn Wolski, Michael Foods  23 Dave Young, videographer  24  25</p>

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<p style="text-align: right;">Page 6</p> <p>1 INDEX</p> <p>2</p> <p>3 WITNESS: Mark Westphal PAGE</p> <p>4</p> <p>5 EXAMINATION BY:</p> <p>6 Ms. Turner Friedman 10</p> <p>7 Mr. Essenmacher 80</p> <p>8</p> <p>9</p> <p>10 INDEX OF EXHIBITS:</p> <p>11</p> <p>12 Westphal Exhibit 1 - Notice 16</p> <p>13</p> <p>14 Westphal Exhibit 2 - April 3, 2014 letter 17</p> <p>15</p> <p>16 Westphal Exhibit 3 - HIGHLY CONFIDENTIAL -</p> <p>17 org chart, Bates MFI0160747 30</p> <p>18</p> <p>19 Westphal Exhibit 4 - Management presentation</p> <p>20 draft, Bates MFI0156884 to 948 36</p> <p>21</p> <p>22 Westphal Exhibit 5 - Food ingredient sales</p> <p>23 meeting, Bates MFI0098462 to 486 52</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 8</p> <p>1 THE VIDEOGRAPHER: We are on the</p> <p>2 record. Please note that the microphones are</p> <p>3 sensitive and may pick up whispering and</p> <p>4 private conversations. Please turn off all</p> <p>5 cell phones or place them away from the</p> <p>6 microphones as they can cause interference to</p> <p>7 the deposition audio. Recording will continue</p> <p>8 until all parties agree to go off the record.</p> <p>9 My name is Dave Young. I'm</p> <p>10 representing Veritext.</p> <p>11 Today's date is April 10, 2014.</p> <p>12 The time is 9:05 a.m.</p> <p>13 This deposition is being held at</p> <p>14 Stinson, Leonard, Street located at 150 South</p> <p>15 Fifth Street, Minneapolis, Minnesota.</p> <p>16 The caption of this case is In Re:</p> <p>17 Processed Eggs Antitrust Litigation. Case is</p> <p>18 filed in the United States District Court for</p> <p>19 the Eastern District of Pennsylvania, Case</p> <p>20 Number MDL 20208 MD 02002.</p> <p>21 The name of the witness is</p> <p>22 Mark Westphal, a 30(b)(6) witness for</p> <p>23 Michael Foods.</p> <p>24 At this time will the attorneys</p> <p>25 please identify themselves and state whom they</p>
<p style="text-align: right;">Page 7</p> <p>1 INDEX OF EXHIBITS (continued): PAGE</p> <p>2</p> <p>3 Westphal Exhibit 6 - CONFIDENTIAL - Email</p> <p>4 chain, Bates MFI0133867 to 68 58</p> <p>5</p> <p>6 Westphal Exhibit 7 - Earnings conference</p> <p>7 call Thomson StreetEvents 60</p> <p>8</p> <p>9 Westphal Exhibit 8 - CONFIDENTIAL - Email</p> <p>10 chain, Bates MFI0033973 to 76 69</p> <p>11</p> <p>12 Westphal Exhibit 9 - Business conduct policy,</p> <p>13 Bates MFI0053741 to 763 71</p> <p>14</p> <p>15 Westphal Exhibit 10 - HIGHLY CONFIDENTIAL -</p> <p>16 Email, Bates MFI0618320 to 321 77</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 9</p> <p>1 represent.</p> <p>2 MS. TURNER FRIEDMAN: My name is</p> <p>3 Lee Turner Friedman from Quinn, Emanuel,</p> <p>4 Urquhart &amp; Sullivan on behalf of the Direct</p> <p>5 Purchaser Plaintiffs.</p> <p>6 MR. GREENBAUM: Cory Greenbaum from</p> <p>7 Bernstein Liebhard also on behalf of the</p> <p>8 Direct Purchaser Plaintiffs.</p> <p>9 MR. MALYSIAK: James Malysiak from</p> <p>10 Jenner and Block Chicago for the Direct Action</p> <p>11 Plaintiffs.</p> <p>12 MR. ESSENMACHER: Keith</p> <p>13 Essenmacher, Lovell, Stewart, Halebian and</p> <p>14 Jacobson representing the Indirect Purchaser</p> <p>15 Plaintiffs.</p> <p>16 MR. GREENE: William Greene of</p> <p>17 Stinson, Leonard, Street representing</p> <p>18 Defendant Michael Foods.</p> <p>19 Ms. Anderson: Carrie Anderson of</p> <p>20 Weil, Gotshal representing Michael Foods.</p> <p>21 MS. REDDING: Whitney Redding from</p> <p>22 Pepper Hamilton representing United Egg</p> <p>23 Producers and United States Egg Marketers.</p> <p>24 THE VIDEOGRAPHER: Our court</p> <p>25 reporter is Dana Anderson representing</p>

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<p style="text-align: right;">Page 10</p> <p>1 Veritext. 2 Will she please swear in the 3 witness. 4 5 MARK WESTPHAL, 6 called as a witness, being first duly sworn, was 7 examined and testified as follows: 8 9 EXAMINATION 10 11 BY MS. TURNER FRIEDMAN: 12 Q. Good morning. How are you? 13 A. Good morning. 14 MS. TURNER FRIEDMAN: Just before 15 we get started, I mentioned this to Bill and 16 Carrie, I know you're on the phone. We had 17 some correspondence about the scope of the 18 30(b)(6) topics including Michael Foods had 19 agree to provide some Bates numbers of certain 20 documents and designate past testimony. And I 21 know we haven't fully resolved those issues in 22 the sense that we haven't yet gotten Bates 23 numbers or got the designation of testimony. 24 We just want to reserve our rights 25 to object or seek further testimony if that</p>	<p style="text-align: right;">Page 12</p> <p>1 A. No. 2 Q. And who is your employer? 3 A. Michael Foods. 4 Q. Is it Michael Food Incorporated? 5 A. Actually Michael Foods Group 6 Incorporated. 7 Q. What is the relationship between Michael 8 Foods Group Incorporated and Michael Foods 9 Incorporated? 10 A. Michael Foods Group is the highest parent 11 of the organization. 12 Q. And what is your business address? 13 A. It's 301 Carlson Parkway in Minnetonka, 14 Minnesota; zip 55401 or 305, sorry. 15 Q. So I know you've been deposed before, but 16 I just want to go over a few basics? 17 A. Sure. 18 Q. First is if you can make sure to answer 19 audibly, say yes or no rather than a head 20 shake or a head nod so that the court reporter 21 can get down what you're saying. 22 A. Okay. 23 Q. If you can try to talk slowly, I will try 24 to talk slowly. And please, if I'm talking 25 too quickly or if you don't understand my</p>
<p style="text-align: right;">Page 11</p> <p>1 becomes necessary, which we don't expect that 2 it will, but just wanted to put that on the 3 record. 4 MR. GREENE: Okay. 5 BY MS. TURNER FRIEDMAN: 6 Q. Now, can you please state your name for 7 the record. 8 A. Mark Westphal. 9 Q. Mark, have you been deposed before? 10 A. I have. 11 Q. Can you tell me when? 12 A. One time; 2012. 13 Q. What was that in regards to? 14 A. A litigation titled National Pasturized 15 Eggs versus Michael Foods. 16 Q. What was the general subject of that 17 litigation? 18 A. It was a patent infringement case. 19 Q. Did you testify in your personal 20 capacity? 21 A. I did. 22 Q. Not as a 30(b)(6) witness? 23 A. No. 24 Q. Were there any antitrust claims in that 25 action?</p>	<p style="text-align: right;">Page 13</p> <p>1 questions for any other reason, let me know, 2 ask me again, ask me for clarification, don't 3 hesitate to do that. 4 A. Okay. 5 Q. We can't talk over each other. So if you 6 could wait for me to finish my question and 7 then answer, I will wait for you to finish 8 your answer before I jump into my next 9 question. And of course you can take a break 10 whenever you want. This isn't an endurance 11 test. The only thing I'll ask is that if 12 there's a question pending, that you answer 13 the question before asking for a break unless 14 of course it's to discuss privilege concerns 15 with counsel. 16 Again, if you don't understand any of my 17 questions, don't hesitate to ask for 18 clarification? 19 MR. GREENE: Before we get to the 20 substance of the questioning, could we just -- 21 we don't need to go off the record. But I'm 22 wondering if the court reporter could just 23 help with the -- 24 THE COURT REPORTER: I'm going to 25 go off the written record.</p>

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<p style="text-align: right;">Page 14</p> <p>1 I think we should go off the video.</p> <p>2 THE VIDEOGRAPHER: We are going off</p> <p>3 the record.</p> <p>4 The time now is 9:11 a.m.</p> <p>5 (Off the record.)</p> <p>6 THE VIDEOGRAPHER: We are back on</p> <p>7 the record.</p> <p>8 Time now is 9:15.</p> <p>9 BY MS. TURNER FRIEDMAN:</p> <p>10 Q. Mr. Westphal, is that how you say your</p> <p>11 name?</p> <p>12 A. Yes.</p> <p>13 Q. Okay. What did you do to prepare for</p> <p>14 your deposition today?</p> <p>15 A. I met with external counsel a couple</p> <p>16 times, including yesterday, and had a</p> <p>17 conversation also with my general counsel.</p> <p>18 Q. Okay. And a couple of times, is that two</p> <p>19 times?</p> <p>20 A. Two.</p> <p>21 Q. When was the first meeting?</p> <p>22 A. Roughly two weeks, three weeks ago</p> <p>23 probably.</p> <p>24 Q. How long was that meeting approximately?</p> <p>25 A. Three hours.</p>	<p style="text-align: right;">Page 16</p> <p>1 within the company.</p> <p>2 Q. And do you remember the two topics that</p> <p>3 you spoke to Mark Anderson about?</p> <p>4 A. I spoke to Mark regarding pricing in</p> <p>5 retail to confirm my understanding, and also,</p> <p>6 I believe it was the last topic on my list,</p> <p>7 relative to how we communicate with our retail</p> <p>8 customers in regards to shell eggs.</p> <p>9 Q. Okay. Have you spoken with any of the</p> <p>10 other employees of Michael Foods who have been</p> <p>11 deposed in this case about your deposition?</p> <p>12 A. Not about my deposition.</p> <p>13 Q. Have you read any of their testimony or</p> <p>14 summaries of their testimony?</p> <p>15 A. No.</p> <p>16 Q. All right. I'm going to hand you</p> <p>17 Exhibit --</p> <p>18 MS. TURNER FRIEDMAN: Are we doing</p> <p>19 one?</p> <p>20 MR. GREENE: Call this Westphal 1?</p> <p>21 MS. TURNER FRIEDMAN: Sure. That</p> <p>22 would be great.</p> <p>23 (Exhibit Number 1 marked for</p> <p>24 identification.)</p> <p>25 BY MS. TURNER FRIEDMAN:</p>
<p style="text-align: right;">Page 15</p> <p>1 Q. Did you look at any documents?</p> <p>2 A. I refreshed myself with the topics that</p> <p>3 were presented to me as 30(b)(6) topics, gave</p> <p>4 a lot of thought to my experience in the</p> <p>5 company, my current job today relative to</p> <p>6 those topics to be prepared for today.</p> <p>7 Q. Okay. Did you talk to any attorneys for</p> <p>8 any of the other defendants in this case other</p> <p>9 than Michael Foods?</p> <p>10 A. I did not.</p> <p>11 Q. Have you talked to anybody else at the</p> <p>12 case within Michael Foods other than the</p> <p>13 general counsel and external counsel that you</p> <p>14 identified?</p> <p>15 A. I did discuss two topics with</p> <p>16 Mark Anderson, our general manager of retail,</p> <p>17 to clarify my understanding of a couple of the</p> <p>18 topics. And I also spoke with the head of our</p> <p>19 HR, Dennis Woodward, in regards to one of the</p> <p>20 topics.</p> <p>21 Q. Okay. I can go through the topics with</p> <p>22 you. But do you remember off the top of your</p> <p>23 head which of the topics you spoke to your</p> <p>24 head of HR about?</p> <p>25 A. The question on the antitrust policies</p>	<p style="text-align: right;">Page 17</p> <p>1 Q. Have you seen this document before?</p> <p>2 A. (Reviews document.) I have not seen this</p> <p>3 specific document, no.</p> <p>4 Q. I can represent to you that this is a</p> <p>5 list of all the original topics for which</p> <p>6 Michael Foods was noticed for a 30(b)(6)</p> <p>7 deposition.</p> <p>8 Have you seen part of this list before?</p> <p>9 A. I received a list that had topic numbers</p> <p>10 on it and a description of those topics.</p> <p>11 Q. Okay. Well, let's do this.</p> <p>12 MS. TURNER FRIEDMAN: We'll do</p> <p>13 Westphal Exhibit 2, which is this one.</p> <p>14 (Exhibit Number 2 marked for</p> <p>15 identification.)</p> <p>16 BY MS. TURNER FRIEDMAN:</p> <p>17 Q. So this is a letter that we received from</p> <p>18 Michael Foods' counsel regarding this</p> <p>19 deposition. And if you look on the back,</p> <p>20 there is a list of topics. I don't know if</p> <p>21 this is the same list that you've seen.</p> <p>22 A. This is the same list, yes.</p> <p>23 Q. Great. So you understand that you're</p> <p>24 here to testify as a corporate representative</p> <p>25 on these particular topics?</p>

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<p style="text-align: right;">Page 18</p> <p>1 A. I do.</p> <p>2 Q. Okay. Well, let's go through them. So</p> <p>3 the first topic is topic 9-B: The manner in</p> <p>4 which prices for Michael Foods purchases of</p> <p>5 eggs for resale are established.</p> <p>6 So is it correct that you're here today</p> <p>7 to testify as a corporate representative on</p> <p>8 this topic?</p> <p>9 A. Yes.</p> <p>10 Q. And what did you do to prepare on this</p> <p>11 topic?</p> <p>12 A. Went through my experiences with the</p> <p>13 company relative to this topic, my knowledge</p> <p>14 both inside the business working directly with</p> <p>15 this and in my role as chief financial officer</p> <p>16 of the company.</p> <p>17 Q. Did you review any documents in preparing</p> <p>18 for this topic?</p> <p>19 A. Not for this topic.</p> <p>20 Q. Do you believe that you are the employee</p> <p>21 of Michael Foods most knowledgeable about this</p> <p>22 topic?</p> <p>23 A. I am knowledgeable about this topic.</p> <p>24 Q. Who else would you say might be knowledge</p> <p>25 about this topic at Michael Foods?</p>	<p style="text-align: right;">Page 20</p> <p>1 A. Yes, and experience in the company.</p> <p>2 Q. So topics 21 and 31: Michael Foods will</p> <p>3 designate a corporate representative to</p> <p>4 provide testimony as to the extent to which</p> <p>5 Michael Foods and/or the subsidiaries of</p> <p>6 Michael Foods is involved in hatching, rearing</p> <p>7 of birds, feeding, production, processing,</p> <p>8 packaging, marketing and distribution.</p> <p>9 So you understand that you're here to</p> <p>10 testify as to this topic as well?</p> <p>11 A. Yes.</p> <p>12 Q. Okay. And what did you do to prepare for</p> <p>13 this topic?</p> <p>14 A. Again, reflected on my experiences in the</p> <p>15 company, my knowledge both within the business</p> <p>16 and as CFO of the company.</p> <p>17 Q. Did you talk to anybody at Michael Foods</p> <p>18 about this topic?</p> <p>19 A. Relative to the deposition, no.</p> <p>20 Q. Did you look at any documents relative to</p> <p>21 the deposition?</p> <p>22 A. Relative to the deposition, no.</p> <p>23 Q. So again, is it fair to say that for the</p> <p>24 purpose of this topic, you're relying</p> <p>25 primarily on your personal knowledge and</p>
<p style="text-align: right;">Page 19</p> <p>1 A. I really can't say.</p> <p>2 Q. Okay. All right. So topic 16 is:</p> <p>3 Michael Foods will designate a corporate</p> <p>4 representative to provide testimony with</p> <p>5 respect to Michael Foods general strategies</p> <p>6 for selling and marketing eggs including to</p> <p>7 customers such as Plaintiffs and including the</p> <p>8 negotiation of those sales.</p> <p>9 Do you understand that you're here to</p> <p>10 serve as a corporate representative to testify</p> <p>11 on this topic?</p> <p>12 A. Yes.</p> <p>13 Q. And what did you do to prepare for this</p> <p>14 topic?</p> <p>15 A. Again, leaning on my experience working</p> <p>16 within the business specifically related to</p> <p>17 this topic, and then my general knowledge as</p> <p>18 my role as CFO with specific knowledge related</p> <p>19 to that topic.</p> <p>20 Q. Did you review any documents to prepare</p> <p>21 for this topic?</p> <p>22 A. Not for purposes of the deposition, no.</p> <p>23 Q. So is it fair to say that for the purpose</p> <p>24 of this topic, you're relying primarily on</p> <p>25 your personal knowledge?</p>	<p style="text-align: right;">Page 21</p> <p>1 experience in the business?</p> <p>2 A. Correct.</p> <p>3 Q. Topic 22 is Michael Foods setting of</p> <p>4 prices for eggs and egg products, including</p> <p>5 how egg and egg product prices have carried</p> <p>6 over time and reasons for those changes.</p> <p>7 You understand that you're here today to</p> <p>8 testify as a corporate representative on this</p> <p>9 topic as well?</p> <p>10 A. Yes.</p> <p>11 Q. Okay. What did you do to prepare for</p> <p>12 this particular topic?</p> <p>13 A. Similar to the 9-B. I guess I didn't see</p> <p>14 a differentiation here between 9-B, so it was</p> <p>15 relying on, again, my experience within</p> <p>16 business relative to pricing in my role as CFO</p> <p>17 of the company. I also did -- in the case of</p> <p>18 this topic, as it was not clear specific to</p> <p>19 retail or other channels, I did speak to Mark</p> <p>20 Anderson in regards to this topic.</p> <p>21 Q. I can see a trend, but I'm going to go</p> <p>22 through each one of these. No surprises yet.</p> <p>23 Okay.</p> <p>24 Did you look at any documents to prepare</p> <p>25 for your testimony on this topic?</p>

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<p style="text-align: right;">Page 22</p> <p>1 A. Not on topic 22.</p> <p>2 Q. Okay. Topic 34, Michael Foods' antitrust</p> <p>3 compliance programs, so you understand that</p> <p>4 you're here to serve as a corporate</p> <p>5 representative on this topic as well?</p> <p>6 A. Yes.</p> <p>7 Q. What did you do to prepare for this</p> <p>8 topic?</p> <p>9 A. On this topic I did review our business</p> <p>10 conduct policy currently. I also reviewed</p> <p>11 some prior year business conduct policies.</p> <p>12 And then reflected on my experience here, I am</p> <p>13 a part of the business conduct committee. We</p> <p>14 have a three-person committee. I am one of</p> <p>15 those individuals on that committee today. So</p> <p>16 reflected on the experiences and our</p> <p>17 responsibilities under that committee. I also</p> <p>18 spoke to our general counsel, Carrie Wolski,</p> <p>19 in regards to this topic.</p> <p>20 Q. Did you look at any other documents other</p> <p>21 than the business conduct policies that you</p> <p>22 mentioned?</p> <p>23 A. No, just the business conduct policies.</p> <p>24 Q. I believe you may have mentioned on this</p> <p>25 topic that you also spoke to somebody from HR.</p>	<p style="text-align: right;">Page 24</p> <p>1 Q. And what did you do to prepare for this</p> <p>2 topic?</p> <p>3 A. I didn't do anything, because I was not</p> <p>4 clear on what the topic related to.</p> <p>5 Q. Okay. So is it fair to say for the</p> <p>6 purpose of this topic you're relying on your</p> <p>7 personal knowledge to the extent you get</p> <p>8 questions?</p> <p>9 A. Yes.</p> <p>10 Q. Okay. And then topic 39, how Michael</p> <p>11 Foods generally communicates with retailers</p> <p>12 regarding the purchase of shell eggs, you</p> <p>13 understand that you're here also to testify</p> <p>14 about this topic?</p> <p>15 A. Yes.</p> <p>16 Q. And what did you do to prepare for this</p> <p>17 topic?</p> <p>18 A. I did speak to Mark Anderson, our general</p> <p>19 manager of retail, to confirm my understanding</p> <p>20 related to this topic.</p> <p>21 Q. Okay. All right. Let's take a step back</p> <p>22 for a second and just do some background if</p> <p>23 that's okay.</p> <p>24 How long have you been working at Michael</p> <p>25 Foods?</p>
<p style="text-align: right;">Page 23</p> <p>1 Am I remembering correctly?</p> <p>2 A. Oh, I apologize. Yes. Dennis Woodward</p> <p>3 also, our head of HR, in addition to Carrie.</p> <p>4 Q. Okay. Then topic 37, which, if any, data</p> <p>5 reports on egg retail pricing from services</p> <p>6 such as IRI, ACNielsen or other third-party</p> <p>7 reporting services to which Michael Foods</p> <p>8 subscribes, you understand that you're here to</p> <p>9 testify on this topic on behalf of Michael</p> <p>10 Foods?</p> <p>11 A. Yes.</p> <p>12 Q. What did you do to prepare on this topic?</p> <p>13 A. Reflected on my experiences here of</p> <p>14 receiving a monthly report. I am part of that</p> <p>15 distribution list. I also spoke to Mark</p> <p>16 Anderson, our general manager of retail, to</p> <p>17 confirm my understanding related to this</p> <p>18 topic.</p> <p>19 Q. Okay. And then number 38, the</p> <p>20 relationship between farm price, the price</p> <p>21 Michael Foods pays for shell eggs it purchases</p> <p>22 and the retail prices of shell eggs, you</p> <p>23 understand that you're here to testify on</p> <p>24 behalf of Michael Foods on this topic as well?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 25</p> <p>1 A. I am approaching my 19th year with</p> <p>2 Michael Foods.</p> <p>3 Q. Let's start earlier and then move up</p> <p>4 then.</p> <p>5 Did you go to college?</p> <p>6 A. I did.</p> <p>7 Q. Where did you go to college?</p> <p>8 A. I graduated from Mankato State</p> <p>9 University.</p> <p>10 Q. What year?</p> <p>11 A. 1989.</p> <p>12 Q. What was your major?</p> <p>13 A. Bachelor of Science in accounting.</p> <p>14 Q. Did you go to any further school after</p> <p>15 you graduated?</p> <p>16 A. I did not.</p> <p>17 Q. What did you do after you graduated</p> <p>18 work-wise?</p> <p>19 A. I actually interned with a company called</p> <p>20 Grant Thornton in Minneapolis. They're a</p> <p>21 national public accounting firm. I then went</p> <p>22 to work with Grant Thornton after graduating</p> <p>23 from Mankato State here in the Minneapolis</p> <p>24 office.</p> <p>25 Q. Okay. How long did you work with Grant</p>

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<p style="text-align: right;">Page 26</p> <p>1 Thornton?</p> <p>2 A. I worked with them from 1989 to June of</p> <p>3 1995.</p> <p>4 Q. What was your job with Grant Thornton?</p> <p>5 A. I was in the audit department, worked my</p> <p>6 way up to senior manager in the audit</p> <p>7 department. And my primary client, both my</p> <p>8 internship and my employment with Grant</p> <p>9 Thornton, was Michael Foods.</p> <p>10 Q. Forgive me for not knowing this. But</p> <p>11 what does it mean to work in the audit</p> <p>12 department at a national public accounting</p> <p>13 firm?</p> <p>14 A. We executed financial audits of</p> <p>15 companies. So we were the auditors of record</p> <p>16 for Michael Foods, and then I worked on a</p> <p>17 number of other clients.</p> <p>18 Q. And then in 1985 -- no, '95 -- I can't</p> <p>19 remember if you said '85 or '95.</p> <p>20 A. '95.</p> <p>21 Q. '95. 1995, what did you do then?</p> <p>22 A. June of 1995, I was hired by John Reedy,</p> <p>23 the then-CFO of Michael Foods, to come work</p> <p>24 for Michael Foods in their corporate office.</p> <p>25 Q. What was your job in their corporate</p>	<p style="text-align: right;">Page 28</p> <p>1 which was a role that was side by side. We</p> <p>2 were the finance support network of the sales</p> <p>3 organization for food service and food</p> <p>4 ingredient and I led that organization.</p> <p>5 Q. Can you explain to me what the financial</p> <p>6 support aspect of that would have entailed?</p> <p>7 A. It involved working directly with sales,</p> <p>8 directly with vice president of sales. And it</p> <p>9 was providing the support needed to either</p> <p>10 negotiate with our customers, make</p> <p>11 recommendations on pricing, to go to customers</p> <p>12 at times. It involved actually meeting with</p> <p>13 customers, negotiating with our sales folks.</p> <p>14 Our organization also supported sales through</p> <p>15 knowledge of grain markets, egg markets that</p> <p>16 the sales folks may not have been as familiar</p> <p>17 with. And then the other part of that</p> <p>18 organization that I led was working the I'll</p> <p>19 call it day-to-day operations of the revenue</p> <p>20 cycle of the business. So it was pricing an</p> <p>21 order, billing an order and, you know, making</p> <p>22 sure that that pricing was in relation to the</p> <p>23 contract.</p> <p>24 Q. And how long did you stay in your role as</p> <p>25 VP of sales, planning and analysis?</p>
<p style="text-align: right;">Page 27</p> <p>1 office in 1995?</p> <p>2 A. Initially it was to lay out the financial</p> <p>3 reporting strategy around SAP. SAP is a</p> <p>4 computer system that we were in the process of</p> <p>5 implementing at Michael Foods. So I began in</p> <p>6 that role shortly after I was hired. We</p> <p>7 started the due diligence on an acquisition of</p> <p>8 a company by the name of Papetti's. And I led</p> <p>9 the due diligence effort associated with that</p> <p>10 acquisition. I then took -- once we acquired</p> <p>11 that company in February of '97, I replaced</p> <p>12 the CFO of Papetti's and relocated to</p> <p>13 New Jersey where their headquarters were.</p> <p>14 Q. How long did you work as CFO of</p> <p>15 Papetti's?</p> <p>16 A. I was there from 1997 to the middle of</p> <p>17 2001.</p> <p>18 Q. In that role as CFO?</p> <p>19 A. Yes.</p> <p>20 Q. And what did you do in 2001?</p> <p>21 A. I relocated back here to Minneapolis. We</p> <p>22 brought all the back-office operations of</p> <p>23 Papetti's back to Minneapolis to the corporate</p> <p>24 office. And I took a role, which was vice</p> <p>25 president of sales, planning and analysis,</p>	<p style="text-align: right;">Page 29</p> <p>1 A. I stayed in that role until January 30th</p> <p>2 of 2006. At that time I was essentially</p> <p>3 pulled out of that role. I was promoted to</p> <p>4 senior vice president of finance. I was</p> <p>5 placed in a role that -- for succession plan</p> <p>6 and development purposes I was being groomed</p> <p>7 to take over the CFO role. Our CFO was</p> <p>8 planning on retiring. So I worked side by</p> <p>9 side -- I reported directly to John Reedy, our</p> <p>10 CFO. I also worked side by side with a</p> <p>11 gentleman by the name of J.D. Clarkson --</p> <p>12 Q. Uh-huh.</p> <p>13 A. -- who was pulled out of the business</p> <p>14 into president and COO. And his ultimate</p> <p>15 succession was to become the CEO of the</p> <p>16 company.</p> <p>17 Q. And now you are CFO of Michael Foods?</p> <p>18 A. So I worked in that role until</p> <p>19 January 1st of 2008 when I took over the CFO</p> <p>20 role of Michael Foods.</p> <p>21 Q. I just want to go back for a moment.</p> <p>22 When you were VP of sales, planning and</p> <p>23 analysis, was that just for Papetti's, or was</p> <p>24 that for all of Michael Foods?</p> <p>25 A. That was for all of Michael Foods.</p>

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<p style="text-align: right;">Page 30</p> <p>1 Q. That was for all of Michael Foods. Did 2 Papetti's have its own VP of sales and 3 analysis at the time or -- 4 A. So when we bought Papetti's they were a 5 very family-oriented company. So they didn't 6 have some of these resources. So I spent a 7 lot of time in New Jersey setting up that 8 function relative to the Papetti's sales 9 organization. When we came back to 10 Minneapolis on the back office we were also 11 combining our sales forces. So we went from 12 two sales forces to one sales force that was 13 supported solely by the sales, planning and 14 analysis organization. 15 Q. Okay. 16 MS. TURNER FRIEDMAN: I'm going to 17 do this. Wait. We have to label it first. 18 (Exhibit Number 3 marked for 19 identification.) 20 BY MS. TURNER FRIEDMAN: 21 Q. Have you seen this document before? 22 A. (Reviews document.) I've seen a lot of 23 organization charts. I'm not sure 24 specifically if I've seen this one. 25 Q. Okay. If you look under -- in very small</p>	<p style="text-align: right;">Page 32</p> <p>1 CFO. 2 Q. Okay. 3 A. But from a business standpoint this was 4 the business structure of the organization. 5 Q. What is Northern Star Company at the top 6 up here? 7 A. That is another subsidiary that Michael 8 Foods owns that sells refrigerated potato 9 products. 10 Q. So did you in your role as -- you know, 11 when you were working in sales, planning and 12 analysis, work in only egg products? 13 A. No, egg products and potato products. 14 Q. Did all of the people on this org chart 15 work in the egg products division as well as 16 with respect to potato products for Michael 17 Foods? 18 A. Some of these folks also would have had 19 dealings with our cheese company, Crystal 20 Farms. 21 Q. Okay. When you were in your role as VP 22 of sales, planning and analysis, did you ever 23 attend any UEP meetings? 24 A. No. 25 Q. Were you ever a UEP board member?</p>
<p style="text-align: right;">Page 31</p> <p>1 writing under the bottom box that appears to 2 be dated February 22nd, 2005. 3 A. Okay. 4 Q. I don't know if you can tell. I think. 5 Okay. So in February of 2005 we just 6 discussed you were in the role of senior vice 7 president of finance? 8 A. No, I took that role January 30th of 9 2006. 10 Q. Oh, 2006. My mistake. I have that 11 written down. 12 So you were still doing sales, planning 13 and analysis as of 2006? 14 A. Yes. We renamed it customer planning and 15 analysis. So it was initially set up as 16 sales, planning and analysis, but it's the 17 same role. 18 Q. The same role? 19 A. Yes. 20 Q. And does this accurately represent sort 21 of the reporting chain with respect to your 22 job in 2005? 23 A. This does not have -- this is I'll call 24 it the operational organizational chart. So I 25 actually reported directly to John Reedy, our</p>	<p style="text-align: right;">Page 33</p> <p>1 A. No. 2 Q. Ever a UEP committee member? 3 A. No. 4 Q. Were you involved in any way in the 5 decision of Michael Foods to join the UEP 6 Certified program, which I believe was also 7 known as the UEP animal welfare program at 8 some time? 9 MR. GREENE: I'm going to object on 10 the grounds that we're beyond the scope of the 11 30(b)(6) deposition. I'll allow the witness 12 to answer this particular question, but I do 13 want to just make my record now that he's here 14 to testify -- he's not -- he was not noticed 15 individually. He's here to testify on behalf 16 of these topics and UEP Certified program is 17 not one of those topics. 18 MS. TURNER FRIEDMAN: Understood. 19 BY MS. TURNER FRIEDMAN: 20 Q. You can answer the question. 21 A. I was aware of the discussions. I was 22 not involved in any way in the decision. 23 Q. Okay. In your -- in the work you did in 24 sales, were you at all involved in analyzing 25 whether any of Michael Foods' customers wanted</p>

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<p style="text-align: right;">Page 34</p> <p>1 certified eggs at that time?</p> <p>2 A. I was not.</p> <p>3 Q. So Michael Foods has an egg products</p> <p>4 division, correct?</p> <p>5 A. Correct.</p> <p>6 Q. Is that its own corporate entity?</p> <p>7 A. We have multiple legal entities that make</p> <p>8 up a -- what we call a reporting segment</p> <p>9 called egg products.</p> <p>10 Q. What are the legal entities that make up</p> <p>11 that reporting segment?</p> <p>12 A. There are a number of them. The larger</p> <p>13 ones are M.G. Walbaum company, Papetti's</p> <p>14 Hygrade Egg Products.</p> <p>15 Q. Are there any others that you can think</p> <p>16 of?</p> <p>17 A. I don't believe there are. But the legal</p> <p>18 structure -- I'm not perfectly familiar with</p> <p>19 the legal structure. But those are the two</p> <p>20 primary entities.</p> <p>21 MR. GREENE: And for the record,</p> <p>22 when Mr. Westphal is asked questions that</p> <p>23 aren't on the list of topics, that is not</p> <p>24 corporate testimony.</p> <p>25 MS. TURNER FRIEDMAN: Okay.</p>	<p style="text-align: right;">Page 36</p> <p>1 Incorporated handle the marketing of the egg</p> <p>2 products for Michael Foods?</p> <p>3 A. Yes.</p> <p>4 Q. What about distribution of Michael Foods'</p> <p>5 egg products, is that done by Michael Foods</p> <p>6 Incorporated?</p> <p>7 A. Again, I believe it's all owned by the</p> <p>8 subsidiaries.</p> <p>9 Q. Okay. Let's do Westphal 4.</p> <p>10 (Exhibit Number 4 marked for</p> <p>11 identification.)</p> <p>12 BY MS. TURNER FRIEDMAN:</p> <p>13 Q. So this one, it got stapled a little</p> <p>14 weirdly. I found that the best way to look at</p> <p>15 it is like this (indicating) and then we can</p> <p>16 flip that one to the extent that helps.</p> <p>17 Have you ever seen this presentation or</p> <p>18 this document before?</p> <p>19 A. (Reviews document.) I'm familiar with</p> <p>20 the management presentation from August of</p> <p>21 2007.</p> <p>22 Q. Did you participate in this presentation?</p> <p>23 A. I did, yes.</p> <p>24 Q. Okay. I'm going to --</p> <p>25 MR. GREENE: Do you want to put the</p>
<p style="text-align: right;">Page 35</p> <p>1 BY MS. TURNER FRIEDMAN:</p> <p>2 Q. Does Michael Foods Incorporated, that</p> <p>3 entity to your knowledge own any egg</p> <p>4 production facilities?</p> <p>5 A. Not to my knowledge.</p> <p>6 Q. Do you know if they own any pullet farms?</p> <p>7 A. Not to my knowledge.</p> <p>8 Q. Any layer houses?</p> <p>9 A. Not to my knowledge.</p> <p>10 Q. Egg processing facilities?</p> <p>11 A. Not to my knowledge.</p> <p>12 Q. Packaging facilities?</p> <p>13 A. Not to my knowledge.</p> <p>14 Q. Okay. Is it your understanding that any</p> <p>15 egg processing or egg production facilities</p> <p>16 within the Michael Foods company would be</p> <p>17 owned by one of the subsidiary companies?</p> <p>18 A. That's my understanding, yes.</p> <p>19 (Carolyn Wolski enters the</p> <p>20 deposition.)</p> <p>21 BY MS. TURNER FRIEDMAN:</p> <p>22 Q. Does Michael Foods Incorporated do its</p> <p>23 own marketing of egg products?</p> <p>24 A. No.</p> <p>25 Q. Would the subsidiaries of Michael Foods</p>	<p style="text-align: right;">Page 37</p> <p>1 Bates numbers in the record?</p> <p>2 MS. TURNER FRIEDMAN: Oh, sure.</p> <p>3 The Bates number of this document is</p> <p>4 MFI0156884.</p> <p>5 BY MS. TURNER FRIEDMAN:</p> <p>6 Q. And this is an August -- appears to be an</p> <p>7 August 2007 draft management presentation for</p> <p>8 Michael Foods. I'm going to direct your</p> <p>9 attention to the fourth page of the</p> <p>10 presentation, which has a timeline on it.</p> <p>11 It's page MFI0156887. I just want to</p> <p>12 understand a little bit about the relationship</p> <p>13 between the subsidiaries and Michael Foods</p> <p>14 Incorporated and who does what.</p> <p>15 A. Okay.</p> <p>16 Q. So I'm going to start at the beginning.</p> <p>17 In 1987, Michael Foods went public, is that</p> <p>18 correct?</p> <p>19 A. That is correct.</p> <p>20 Q. Okay.</p> <p>21 MR. GREENE: And once again, I</p> <p>22 don't believe that this testimony concerns any</p> <p>23 of the topics. But I'll go ahead and let you</p> <p>24 question him on this.</p> <p>25 MS. TURNER FRIEDMAN: I think this</p>

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<p style="text-align: right;">Page 38</p> <p>1 is relevant to topics 21 and 31 which is the</p> <p>2 extent to which Michael Foods and its</p> <p>3 subsidiaries does the various parts of the egg</p> <p>4 production business, which I'm getting there.</p> <p>5 MR. GREENE: Okay.</p> <p>6 BY MS. TURNER FRIEDMAN:</p> <p>7 Q. Okay. Do you know if in 1987, when</p> <p>8 Michael Foods became a public company, whether</p> <p>9 it owned any egg production facilities?</p> <p>10 A. I don't know in 1987.</p> <p>11 Q. Okay. Did Michael Foods produce</p> <p>12 egg -- processed egg products in 1987, do you</p> <p>13 know?</p> <p>14 A. Michael Foods? Which entity are you</p> <p>15 referring to?</p> <p>16 Q. I guess I'm referring to the new -- the</p> <p>17 Michael Foods Inc. which became its own</p> <p>18 company, I believe -- is that in 1987?</p> <p>19 A. Michael Foods was the holding company,</p> <p>20 the parent company, if you will, of the</p> <p>21 acquisition. There were subsidiaries then</p> <p>22 under Michael Foods when we went public.</p> <p>23 Q. What were the subsidiaries under Michael</p> <p>24 Foods when you went public, do you know?</p> <p>25 A. I believe they would have been Northern</p>	<p style="text-align: right;">Page 40</p> <p>1 the entry into that business.</p> <p>2 Q. Okay. Do you know when Michael Foods</p> <p>3 entered the processed eggs products business</p> <p>4 whether Michael Foods produced any of its own</p> <p>5 eggs?</p> <p>6 A. Produced their own, meaning...</p> <p>7 Q. Meaning had layer houses that laid eggs.</p> <p>8 A. M.G. Waldbaum did, yes. So as part of</p> <p>9 that acquisition, we acquired laying</p> <p>10 facilities.</p> <p>11 Q. So M.G. Waldbaum had layer facilities.</p> <p>12 Does it still have laying facilities?</p> <p>13 A. Yes.</p> <p>14 Q. Are you aware of whether it's had --</p> <p>15 M.G. Waldbaum has had laying facilities</p> <p>16 consistently since 1988?</p> <p>17 A. They have.</p> <p>18 Q. And M.G. Waldbaum does it have pullet</p> <p>19 houses as well?</p> <p>20 A. Yes.</p> <p>21 Q. It owns pullet houses.</p> <p>22 Do you know if it owned pullet houses as</p> <p>23 far back as 1988?</p> <p>24 A. They did, yes.</p> <p>25 Q. Does M.G. Waldbaum own breaking</p>
<p style="text-align: right;">Page 39</p> <p>1 Star, Crystal Foods at the time and a company</p> <p>2 that we no longer own by the name of Kohler</p> <p>3 Mixed Specialties.</p> <p>4 Q. Okay. Do you know which subsidiary of</p> <p>5 Michael Foods was in the processed eggs</p> <p>6 products business at this time, at the time</p> <p>7 the company went public?</p> <p>8 A. I don't believe we were in the processed</p> <p>9 eggs business.</p> <p>10 Q. Okay.</p> <p>11 A. Let me just make sure of the timeline</p> <p>12 here; yes, that's correct.</p> <p>13 Q. So do you know when Michael Foods got</p> <p>14 into the processed eggs business?</p> <p>15 A. Not specifically but shortly after</p> <p>16 that -- that IPO.</p> <p>17 Q. And would that be with the acquisition of</p> <p>18 M.G. Waldbaum Company in 1998?</p> <p>19 A. There were two acquisitions, but that was</p> <p>20 the -- that was the big acquisition that got</p> <p>21 us into that -- into that business. We had</p> <p>22 the technology prior to the acquisition of</p> <p>23 Waldbaum through other acquisition, a very</p> <p>24 small acquisition. But from a scale</p> <p>25 standpoint, the acquisition of Waldbaum was</p>	<p style="text-align: right;">Page 41</p> <p>1 facilities?</p> <p>2 A. We don't have breaking facilities.</p> <p>3 Q. Is that the wrong term?</p> <p>4 A. We have processing facilities that</p> <p>5 include breaking operations.</p> <p>6 Q. Okay. When I say: Does Michael Foods --</p> <p>7 or does M.G. Waldbaum have in-line breaking</p> <p>8 facilities, is that something that is a</p> <p>9 reasonable question to ask?</p> <p>10 A. That is a reasonable question.</p> <p>11 Q. Does M.G. Waldbaum own in-line breaking</p> <p>12 facilities?</p> <p>13 A. We do; not all of them, but we do own</p> <p>14 some in-line breaking facilities.</p> <p>15 Q. When you say "not all of them," what does</p> <p>16 that mean?</p> <p>17 A. You have in-line, which is our Gaylord,</p> <p>18 Minnesota where the eggs come directly from</p> <p>19 the layer houses into the production facility.</p> <p>20 And you have offline breaking which is I have</p> <p>21 a farm and I have a breaking operation at that</p> <p>22 farm where I break the eggs, bring the liquid</p> <p>23 into the plant. Or you could have a facility</p> <p>24 that is just producing shell eggs. We are</p> <p>25 then trucking those into a facility that has a</p>

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<p style="text-align: right;">Page 42</p> <p>1 breaking machine in the facility and we're</p> <p>2 breaking those eggs in the facility.</p> <p>3 Q. Does M.G. Waldbaum own any shell egg</p> <p>4 production facilities in the last category</p> <p>5 that you just described where those eggs are</p> <p>6 then taken by truck to a breaking facility</p> <p>7 somewhere else?</p> <p>8 A. We do. It is all local, though. So it's</p> <p>9 literally you're trucking them a short</p> <p>10 distance from some of our farms into our own</p> <p>11 breaking facilities.</p> <p>12 Q. Okay. Are all of the eggs produced --</p> <p>13 well, let me take a step back. I'm referring</p> <p>14 to M.G. Waldbaum, because that's the</p> <p>15 subsidiary I know that we're talking about.</p> <p>16 What is the relationship between</p> <p>17 M.G. Waldbaum and Papetti's?</p> <p>18 A. They were two separate legal entities.</p> <p>19 So the acquisition of Waldbaum in the late</p> <p>20 '80s was an egg company. Papetti's, which we</p> <p>21 acquired in February of 1997, was also an egg</p> <p>22 products company, so they are two separate</p> <p>23 subsidiaries as we have them legally today.</p> <p>24 The business today is run as an egg products</p> <p>25 business.</p>	<p style="text-align: right;">Page 44</p> <p>1 A. Correct.</p> <p>2 Q. Are the egg products coming out of</p> <p>3 Papetti's and coming out of M.G. Waldbaum</p> <p>4 Company sold through the same team of people</p> <p>5 at Michael Foods?</p> <p>6 A. Yes, they are.</p> <p>7 Q. Who does the actual distribution of those</p> <p>8 egg products, physical distribution of those</p> <p>9 egg products?</p> <p>10 A. They're done through centralized</p> <p>11 distribution centers. So when we distribute</p> <p>12 product to customers, we are distributing</p> <p>13 eggs, potatoes and to certain customers cheese</p> <p>14 all on the same truck. So it's a centralized</p> <p>15 distribution point.</p> <p>16 Q. Owned by Michael Foods?</p> <p>17 A. I'm not positive of the ownership. It's</p> <p>18 not going to be Michael Foods. It's going to</p> <p>19 be -- I think the Gaylord, Minnesota</p> <p>20 distribution facility I believe is owned by</p> <p>21 the egg products company. There's a</p> <p>22 distribution center in Lake Mills, Wisconsin</p> <p>23 that's owned by Crystal Farms. So it's owned</p> <p>24 within the subsidiaries, not completely</p> <p>25 positive of exactly who owns them.</p>
<p style="text-align: right;">Page 43</p> <p>1 Q. Okay. Does each subsidiary own its own</p> <p>2 egg processing facilities?</p> <p>3 A. Egg processing facilities, yes.</p> <p>4 Q. Okay. Does each subsidiary own its own</p> <p>5 layer houses? Well, does Papetti's own any</p> <p>6 layer houses?</p> <p>7 A. Papetti's does not own any layer houses.</p> <p>8 Q. Is Papetti's only in the further</p> <p>9 processing aspect of the business?</p> <p>10 A. Correct. So we receive shell eggs, we</p> <p>11 buy shell eggs from the outside. Those are</p> <p>12 delivered into the processing plants, and we</p> <p>13 process the egg there.</p> <p>14 Q. So to the extent that Michael Foods and</p> <p>15 its subsidiaries produces its own eggs, that</p> <p>16 would be through the facilities with</p> <p>17 M.G. Waldbaum Company?</p> <p>18 A. That's correct.</p> <p>19 Q. Okay. Once we have a further egged --</p> <p>20 further egg processed product, whether it</p> <p>21 comes from M.G. Waldbaum Company or Papetti's,</p> <p>22 are those sold through the same team of</p> <p>23 people -- let me strike that question.</p> <p>24 You I believe testified that it's largely</p> <p>25 run as one business at this stage?</p>	<p style="text-align: right;">Page 45</p> <p>1 Q. Do you know if the trucks are also owned</p> <p>2 by the Michael Foods group of companies?</p> <p>3 A. Again, the subsidiaries, they would be</p> <p>4 owned by those, yes.</p> <p>5 Q. So Michael Foods, to the best of your</p> <p>6 knowledge, doesn't use any third parties to</p> <p>7 distribute or to physically distribute their</p> <p>8 egg products?</p> <p>9 A. We have a dual-pronged, if you will,</p> <p>10 distribution system. So we have some of our</p> <p>11 own distribution centers that we distribute</p> <p>12 product directly from. We also contract for</p> <p>13 third-party distribution centers. So for</p> <p>14 instance, on the east coast, we don't own a</p> <p>15 distribution facility out there. We go</p> <p>16 through a third party to do the logistics</p> <p>17 there.</p> <p>18 Q. Okay. For domestic -- for Michael Foods</p> <p>19 domestic egg products business, are there any</p> <p>20 other subsidiaries other than M.G. Waldbaum</p> <p>21 and Papetti's that you know of that own the</p> <p>22 processing or egg production facilities used</p> <p>23 by Michael Foods?</p> <p>24 A. No.</p> <p>25 Q. Am I right that there's a subsidiary of</p>

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<p>1 Michael Foods called MFI Food Canada Limited?</p> <p>2 A. That's correct.</p> <p>3 Q. Does that do any domestic egg products</p> <p>4 business?</p> <p>5 A. Nothing domestic. It's all Canadian.</p> <p>6 Q. Okay. Would you agree that certain egg</p> <p>7 production facilities owned by Michael Foods</p> <p>8 are fully integrated?</p> <p>9 MR. GREENE: Objection, vague.</p> <p>10 THE WITNESS: Owned by Michael</p> <p>11 Foods, no.</p> <p>12 BY MS. TURNER FRIEDMAN:</p> <p>13 Q. Would you agree that any of the egg --</p> <p>14 certain egg production facilities owned by</p> <p>15 Michael Foods or its subsidiaries are fully</p> <p>16 integrated?</p> <p>17 A. How would you define "fully integrated"?</p> <p>18 Q. Meaning that the same facility is</p> <p>19 involved in -- from the production of eggs all</p> <p>20 the way through the processing of egg</p> <p>21 products.</p> <p>22 A. So what we have -- we don't have any</p> <p>23 hatcheries. We buy day-old chicks. We put</p> <p>24 those day-old chicks into pullet facilities.</p> <p>25 We raise those chicks to 16 to 18 weeks of</p>	<p>1 Again, the legal structure I'm not clear on.</p> <p>2 But I believe M.G. Waldbaum was the acquiring</p> <p>3 entity. I don't believe they're a subsidiary</p> <p>4 for Primera Foods.</p> <p>5 Q. Do you know if Primera Foods owned any</p> <p>6 laying hens at the time it was acquired or at</p> <p>7 the time its assets were acquired?</p> <p>8 A. They did not own any, no.</p> <p>9 Q. So M.G. Waldbaum would have acquired only</p> <p>10 egg processing facilities?</p> <p>11 A. We acquired two egg processing facilities</p> <p>12 in conjunction with the acquisition.</p> <p>13 Q. Are you aware that before Michael Foods</p> <p>14 owned or purchased the acquisitions -- strike</p> <p>15 that. Let me try again. Trying to stay clear</p> <p>16 with my legal entities.</p> <p>17 Before M.G. Waldbaum purchased Primera</p> <p>18 Foods, are you aware that it was owned by a</p> <p>19 company called ESI Holdings?</p> <p>20 A. Yes.</p> <p>21 Q. Are you familiar with a company called</p> <p>22 Creekwood Farms Incorporated?</p> <p>23 A. I am not.</p> <p>24 Q. I think I'm done with this one.</p> <p>25 MS. TURNER FRIEDMAN: Could we take</p>
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<p>1 age. Those then go into our layer facilities.</p> <p>2 They become productive at 21 weeks. And from</p> <p>3 that point those eggs are then utilized</p> <p>4 within -- within the organization to process</p> <p>5 egg products.</p> <p>6 Q. And then those processed egg products are</p> <p>7 sold and distributed by the Michael Foods</p> <p>8 group of companies?</p> <p>9 A. Yes.</p> <p>10 Q. Do you know what percentage of the eggs</p> <p>11 processed by Michael Foods comes from its own</p> <p>12 laying hens?</p> <p>13 A. So approximately today roughly 25 percent</p> <p>14 of the total requirements of sales to</p> <p>15 customers come from what we would call</p> <p>16 internally produced eggs.</p> <p>17 Q. Okay. Are you aware of in 2013</p> <p>18 M.G. Waldbaum acquiring a company called</p> <p>19 Primera Foods Corporation?</p> <p>20 A. I am familiar with that.</p> <p>21 Q. Were you involved in that acquisition?</p> <p>22 A. I was.</p> <p>23 Q. Is Primera Foods now a subsidiary of</p> <p>24 M.G. Waldbaum?</p> <p>25 A. I believe M.G. Waldbaum acquired them.</p>	<p>1 a five-minute break? Is that okay?</p> <p>2 THE VIDEOGRAPHER: We are going off</p> <p>3 the record.</p> <p>4 The time is 9:55.</p> <p>5 (Recess.)</p> <p>6 THE VIDEOGRAPHER: We are back on</p> <p>7 the record.</p> <p>8 Time now is 10:07.</p> <p>9 BY MS. TURNER FRIEDMAN:</p> <p>10 Q. I have a couple quick more questions</p> <p>11 about the subsidiaries structure, and then we</p> <p>12 can move on. But we didn't talk at all about</p> <p>13 Crystal Farms. Can you tell me what --</p> <p>14 Crystal Farm or Crystal Farms, first of all?</p> <p>15 A. Crystal Farms.</p> <p>16 Q. Crystal Farms. What is Crystal Farms'</p> <p>17 involvement in the egg business?</p> <p>18 A. They distribute to their retail customers</p> <p>19 a variety of what I would call dairy case</p> <p>20 products; cheese, butter, margarine, bagels.</p> <p>21 And they also, relative to eggs, they</p> <p>22 distribute some shell eggs.</p> <p>23 Q. Are those shell eggs that are produced on</p> <p>24 the facilities owned by M.G. Waldbaum and</p> <p>25 Papetti's?</p>

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<p style="text-align: right;">Page 50</p> <p>1 A. Some of the shell eggs are produced at an  2 M.G. Waldbaum facility in Le Sueur, Minnesota.  3 The other portion of those eggs that we sell  4 at retail are purchased from an outside  5 vendor, S and R Egg Company.  6 Q. Aside from Crystal Farms, am I right that  7 Michael Foods generally has three channels of  8 customers to which it sells and markets its  9 eggs?  10 A. Correct. Food service, food ingredient  11 and retail is what we name those channels.  12 Q. Are M.G. Waldbaum and Papetti's involved  13 in the sale of egg products to all three of  14 those different types of channels?  15 A. Yes.  16 Q. So it's not the case that one  17 subsidiary's eggs are sold to one type of  18 customer and the other subsidiary's egg  19 products are sold to another type of customer?  20 A. No.  21 Q. Okay. Now move on for a minute now to  22 topic 16 which is the general strategies for  23 selling and marketing eggs.  24 A. Okay.  25 Q. You mentioned -- well, when you were the</p>	<p style="text-align: right;">Page 52</p> <p>1 just generally a market education of both of  2 those grain and egg markets.  3 Q. In order for the sales team -- strike  4 that, please.  5 In order to assist the sales team in  6 being best able to sell eggs to the various  7 customers?  8 A. Yes. It was putting them in a position  9 to be educated and be able to talk  10 intelligently to customers as they're  11 negotiating the price.  12 Q. Okay. I'm going to --  13 MS. TURNER FRIEDMAN: What number  14 are we at?  15 THE COURT REPORTER: Five.  16 (Exhibit Number 5 marked for  17 identification.)  18 BY MS. TURNER FRIEDMAN:  19 Q. So this is MFI0098462. And it appears to  20 be a -- it's a document called MFI Food  21 Ingredient Sales Meeting dated April 15, 2008.  22 Have you seen this document?  23 A. (Reviews document.)  24 MR. GREENE: Lee, we usually  25 including the whole range.</p>
<p style="text-align: right;">Page 51</p> <p>1 VP of sales, planning and analysis, you  2 provided support to the sales team, correct?  3 A. Correct.  4 Q. And what years was that again?  5 A. Beginning in Minneapolis in mid 2001 and  6 ending in 2006, January 30th of 2006.  7 Q. And as part of that role, part of the  8 support that you provided to the sales team  9 was related to knowledge of the grain markets  10 and egg markets?  11 A. Correct.  12 Q. Can you describe a little bit more about  13 what that would have entailed?  14 A. So it entails educating yourself relative  15 to the -- both markets, so grain markets  16 around Chicago Board of Trade, what's  17 happening obviously with the crops. We have  18 advisors to our procurement group that advise  19 us on, you know, markets being in tune with  20 our procurement folks to understand how  21 they're viewing those. And then similarly on  22 the egg products side, understanding the Uner  23 Barry egg markets, understanding the dynamics  24 of that market working with egg procurement to  25 understand their views of those markets and</p>	<p style="text-align: right;">Page 53</p> <p>1 MS. TURNER FRIEDMAN: Oh, okay. So  2 it starts MFI0098462 and ends at MFI0098486.  3 THE WITNESS: I don't believe I've  4 seen this specific document.  5 BY MS. TURNER FRIEDMAN:  6 Q. I know this document is dated in 2008.  7 In 2008 would you have been at a meeting such  8 as this one, a food ingredient sales meeting?  9 MR. GREENE: Objection to the form.  10 MS. TURNER FRIEDMAN: I can  11 rephrase.  12 BY MS. TURNER FRIEDMAN:  13 Q. In 2008 would you have attended, if not  14 necessarily this particular meeting, but food  15 ingredient sales meetings?  16 A. If this was the food ingredient national  17 sales meeting that Terry was presenting at, I  18 attended that meeting. But I attended it for  19 purposes of presenting a different topic.  20 Q. Okay. When you were in your role in  21 sales, planning, analysis from 2001 to 2006,  22 would you have attended this type of meeting?  23 A. Yes.  24 Q. I'm going to direct your attention to  25 page 3.</p>

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<p style="text-align: right;">Page 54</p> <p>1 A. Uh-huh.</p> <p>2 Q. This appears to be a slide discussing the</p> <p>3 2007 Urner Barry markets, correct?</p> <p>4 A. Appears to be, yes.</p> <p>5 Q. The second dash, not necessarily bullet</p> <p>6 point, but the second dash on this slide says</p> <p>7 Lower-Layer Inventories.</p> <p>8 In your experience from 2001 to 2006, are</p> <p>9 lower-layer inventories the type of thing that</p> <p>10 could impact the egg market?</p> <p>11 A. Sorry. Could you repeat the question.</p> <p>12 Q. Sure. Slower?</p> <p>13 A. Yeah.</p> <p>14 Q. In your experience analyzing the egg</p> <p>15 markets from 2001 to 2006, are lower-layer</p> <p>16 inventories, is that a factor that could</p> <p>17 impact the egg market?</p> <p>18 MR. GREENE: I just want to ask:</p> <p>19 Are we on one of the topics here, or are you</p> <p>20 asking Mr. Westphal in his individual</p> <p>21 capacity?</p> <p>22 MS. TURNER FRIEDMAN: I think we're</p> <p>23 within topic 16 about general strategies for</p> <p>24 selling and marketing eggs. My next question</p> <p>25 will be: Is that something that was</p>	<p style="text-align: right;">Page 56</p> <p>1 A. My team would not have within that group,</p> <p>2 no.</p> <p>3 Q. Why would your team not have?</p> <p>4 A. That was just not one of the factors as</p> <p>5 we worked with our customers that we took into</p> <p>6 account as we looked at the environment.</p> <p>7 Q. Are you aware of other teams that would</p> <p>8 have taken that into account when considering</p> <p>9 the market for eggs?</p> <p>10 A. Not that I am aware of.</p> <p>11 Q. Would you agree that the continued impact</p> <p>12 of UEP Certified animal welfare guidelines to</p> <p>13 increase the space for hens is one of the</p> <p>14 market factors you considered during that</p> <p>15 time?</p> <p>16 A. We've considered density as part of the</p> <p>17 UEP Certified program. The way that we looked</p> <p>18 at it was that didn't -- we still had to go</p> <p>19 find eggs. People weren't restricted by the</p> <p>20 ability to build new facilities. So we</p> <p>21 obviously were aware of the density portion of</p> <p>22 the UEP Certified. Our whole idea was we've</p> <p>23 got to go out to find eggs to sell the</p> <p>24 customers. And we were frankly, from my</p> <p>25 group, from a pricing side, we were more</p>
<p style="text-align: right;">Page 55</p> <p>1 considered in your role when you were</p> <p>2 supporting the sales team?</p> <p>3 But if the objection is there, it's</p> <p>4 noted.</p> <p>5 THE WITNESS: In my capacity, USDA</p> <p>6 issues layer numbers every month. In my</p> <p>7 capacity, that was one of the factors that we</p> <p>8 would look at in again understanding the</p> <p>9 market, understanding the environment relative</p> <p>10 to where the egg market might be going. That</p> <p>11 was one of the factors, yes.</p> <p>12 BY MS. TURNER FRIEDMAN:</p> <p>13 Q. And that's one of the factors that in</p> <p>14 educating yourself about the market, you were</p> <p>15 aware could impact the prices in the egg</p> <p>16 market?</p> <p>17 A. It was one of the factors that we would</p> <p>18 look at.</p> <p>19 Q. Is it also the case that timely U.S. egg</p> <p>20 marketers shell egg exports, which is the</p> <p>21 fourth bullet on this list, one of the factors</p> <p>22 that you would look at?</p> <p>23 A. We did -- I did not personally look at</p> <p>24 that data point.</p> <p>25 Q. Do you know if your team did?</p>	<p style="text-align: right;">Page 57</p> <p>1 concerned of what is it going to cost us to go</p> <p>2 out and buy incremental eggs to support our</p> <p>3 customers' requirements and whether we were</p> <p>4 going to be able to price those to those</p> <p>5 customers.</p> <p>6 Q. And did you consider cage densities</p> <p>7 because you knew that there could be an impact</p> <p>8 on price based on these cage densities?</p> <p>9 A. No. We assumed cage densities because we</p> <p>10 knew what was happening with our own</p> <p>11 facilities. We were reducing our flock size</p> <p>12 by 3 million birds to get to the densities for</p> <p>13 UEP Certified. That was going to raise our</p> <p>14 costs relative to our internal flocks. And</p> <p>15 then we made an assessment of what it would</p> <p>16 cost us incrementally to go out and purchase</p> <p>17 that liquid to replace to ship to our</p> <p>18 customers.</p> <p>19 So we were focused on trying to identify</p> <p>20 what was the ultimate cost. That's how we</p> <p>21 price our product, such that we would be able</p> <p>22 to go to our customers and make every attempt</p> <p>23 to pass those increased costs on to our</p> <p>24 customers.</p> <p>25 Q. And similarly is it the case that, on the</p>

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<p style="text-align: right;">Page 58</p> <p>1 last bullet point here: Limited construction  2 of newer remodelled layer facilities would  3 factor into your knowledge of the egg market  4 in pricing your products?  5 A. I wouldn't have specific knowledge of  6 that. This would have been our procurement  7 group.  8 Q. Okay.  9 (Exhibit Number 6 marked for  10 identification.)  11 BY MS. TURNER FRIEDMAN:  12 Q. So Westphal 6, and the Bates number is  13 MFI0133867 to 868. This was previously  14 Ostrander 11.  15 Do you recall receiving this email chain?  16 A. (Reviews document.) I don't recall it  17 from back in 2007. I see that I was copied on  18 it, yes.  19 Q. Okay. Do you see that you were copied on  20 what is the last email in the chain and the  21 second to the last email in the chain it  22 appears?  23 A. Yes.  24 Q. Which were dated January 3, 2007?  25 A. Yes.</p>	<p style="text-align: right;">Page 60</p> <p>1 A. So I was in a different role during this  2 time period. So I can't speak specifically to  3 what was being considered by the sales  4 organization at this point in time.  5 Q. Okay.  6 A. I was in a different role.  7 Q. But that doesn't change your answer as to  8 whether or not exports were considered when  9 you were in your role in sales from 2001 to  10 2006?  11 A. That's correct.  12 (Exhibit Number 7 marked for  13 identification.)  14 BY MS. TURNER FRIEDMAN:  15 Q. So this is Westphal 7. And this is a  16 public document that I believe was also  17 produced in this case, but this for some  18 reason didn't print out with Bates numbers.  19 But it's also a public document. And it's  20 titled Final Transcript Thomson StreetEvents  21 MIKL Q2 2008 Michael Foods Earnings Conference  22 Call dated August 12th, 2008.  23 A. Okay.  24 Q. All right. Have you seen this document?  25 A. (Reviews document.) I have not seen this</p>
<p style="text-align: right;">Page 59</p> <p>1 Q. Okay. Do you see down at the bottom of  2 the page there's an email from Vince O'Brien  3 to Gregg Ostrander that then becomes part of  4 the chain?  5 A. Yes.  6 Q. Okay. And that email states: Greg, It  7 appears that the egg market is getting ready  8 for another run-up with the upcoming shell egg  9 export to Europe. The export is for 300  10 containers, approximately nine to 10 million  11 liquid pounds over four weeks. In late 2006  12 the export was about eight containers. So  13 this obviously is more significant. Vince.  14 Do you see that?  15 A. Yes.  16 Q. And then do you see the following email  17 from Gregg Ostrander to Vince O'Brien? It  18 says: Let's make sure we are capitalizing on  19 our pricing.  20 Do you see that?  21 A. Yes.  22 Q. Does this email refresh your recollection  23 about whether exports were being considered by  24 the sales team in its knowledge of the egg  25 market when determining its pricing?</p>	<p style="text-align: right;">Page 61</p> <p>1 specific document.  2 Q. Okay. Do you recall this particular  3 earnings conference call?  4 A. I don't recall the specific call, but I  5 would've been a part of it.  6 Q. Okay.  7 A. I was in my role as CFO during this  8 period of time.  9 Q. And if you flip to page 2, Mark -- who is  10 Mark Witmer?  11 A. He was our treasury -- treasurer and  12 secretary reporting to me at that time.  13 Q. Okay. And I believe it -- if we go to  14 the second paragraph under where he begins  15 speaking, it says: I will tell you who is in  16 the room with me. We have Dave Johnson, our  17 president and CEO, and Mark Westphal, our CFO.  18 A. Correct.  19 Q. So it appears that you were at that  20 meeting?  21 A. I was.  22 Q. Okay. What are these earnings conference  23 calls for?  24 A. So during this period of time we are --  25 we are owned by private equity. Private</p>

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<p style="text-align: right;">Page 62</p> <p>1 equity is -- part of the model of private  2 equity is you have debt, whether that be bank  3 debt or in this case we have something called  4 subordinated notes, which are bonds, in  5 essence. We have bondholders. So investors  6 in our bonds. And we are not obligated to do  7 this. But as part of the communication  8 process to make sure our bondholders kind of  9 understand what's happening in our business  10 we've had a practice of holding a quarterly  11 conference call with our bondholders.  12 Q. All right. And in these conference calls  13 is it typical to talk about sales and the  14 results of those sales?  15 A. It's a pretty typical agenda where we  16 talk about the quarterly results. We talk  17 about each segment's results for the quarter.  18 And then we typically give what we call a tone  19 of business for the coming quarter to give,  20 you know, bondholders an idea of kind of what  21 our outlook is for the next quarter.  22 Q. Okay. On page 2 of the transcript, so  23 that's the third page of the document, if you  24 go -- it's almost all the way down the page,  25 the fourth from the bottom paragraph that</p>	<p style="text-align: right;">Page 64</p> <p>1 supporting high egg prices is a short-term  2 contraction of supply due to the broad  3 adoption of animal well-being programs on bird  4 density. These are supported by trade groups  5 out there, UEP and so on.  6 Do you see where it says that?  7 A. I do.  8 MR. GREENE: And just for the  9 record, you didn't complete the entirety of  10 the previous paragraph.  11 MS. TURNER FRIEDMAN: You're right.  12 MR. GREENE: So there was some  13 material in between.  14 MS. TURNER FRIEDMAN: That's  15 correct.  16 BY MS. TURNER FRIEDMAN:  17 Q. Okay. And my question is just: Do you  18 recall -- well, do you recall high egg prices  19 in the egg market in mid 2008?  20 A. Recall two things, two costs being high.  21 Grain costs were extremely high in 2008, which  22 it extended a trend from late in 2006. And  23 also during that period of time it was a  24 relatively high egg market also. So we had  25 both sides of our cost inputs, both the grains</p>
<p style="text-align: right;">Page 63</p> <p>1 starts: On the sales side...  2 A. Okay.  3 MR. GREENE: Mr. Westphal, you can  4 read --  5 MS. TURNER FRIEDMAN: Oh, yes.  6 MR. GREENE: -- as much of the  7 document as you want.  8 THE WITNESS: I will.  9 MS. TURNER FRIEDMAN: Absolutely.  10 BY MS. TURNER FRIEDMAN:  11 Q. Let me know when you're ready.  12 A. So you're just asking about that one  13 paragraph there?  14 Q. And the paragraph after.  15 A. Okay. (Reviews document.) Okay.  16 Q. Okay. Do you see where it says: On the  17 sales side the 31 percent dollar sales gain  18 reflects notable inflation from the egg  19 market. The market remained well above  20 historical levels driven in part by the high  21 cost of feeds.  22 Do you see where it says that?  23 A. Yes.  24 Q. And then do you see the following  25 paragraph where it says: Another factor</p>	<p style="text-align: right;">Page 65</p> <p>1 and the eggs were high during this period of  2 time.  3 Q. And do you recall one of the factors  4 contributing to high egg prices during that  5 time being the short-term contraction of  6 supply due to the broad adoption of animal  7 well-being programs on bird density?  8 A. That was relative to what we were doing  9 internally. So we -- you know, bird density  10 was again one of the factors that was  11 affecting cost. And by the term "short term,"  12 you know, it -- it isn't -- it took us time to  13 go replace that liquid on a long-term basis.  14 So what we were trying to communicate to debt  15 holders was there is a short-term impact of  16 bird density until you can replace those  17 birds.  18 MR. GREENE: Also, I think,  19 Counsel, we're straining the limits of the  20 topic here. I mean, I'll let you go on,  21 but --  22 MS. TURNER FRIEDMAN: I don't have  23 a thousand more questions on this.  24 MR. GREENE: Okay.  25 MS. TURNER FRIEDMAN: Okay.</p>

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<p style="text-align: right;">Page 66</p> <p>1 THE WITNESS: And just to make</p> <p>2 clear, what he's referring to as egg market</p> <p>3 is -- in the first paragraph is grain-related.</p> <p>4 So the wording that you skipped there, so</p> <p>5 that -- so two years of remarkable compounding</p> <p>6 of feed costs very inflationary is</p> <p>7 specifically related to grains. This --</p> <p>8 during this period of time, grain costs were</p> <p>9 absolutely skyrocketing as a result of the</p> <p>10 ethanol industry in the U.S.</p> <p>11 BY MS. TURNER FRIEDMAN:</p> <p>12 Q. This paragraph, another factor supporting</p> <p>13 high egg prices, doesn't say anything about</p> <p>14 grain costs, does it?</p> <p>15 A. Feed cost. Feed cost is grain.</p> <p>16 Q. I'm sorry. I --</p> <p>17 A. What you feed a chicken is --</p> <p>18 Q. I was referring to the second paragraph.</p> <p>19 A. Oh. I'm sorry.</p> <p>20 Q. Another factor supporting high egg prices</p> <p>21 is a short-term contraction of supply. That</p> <p>22 paragraph doesn't say anything about feed or</p> <p>23 grain cost, does it?</p> <p>24 A. That would've been relative to the Urner</p> <p>25 Barry egg market that we buy --</p>	<p style="text-align: right;">Page 68</p> <p>1 Q. Okay. Do you see where he says, "Supply</p> <p>2 has been pressured through the animal</p> <p>3 well-being efforts I think by the industry"?</p> <p>4 A. Yes.</p> <p>5 Q. And you see where he goes on to say: You</p> <p>6 know Urner Barry is really a supply and demand</p> <p>7 market. Over time economically it certainly</p> <p>8 has to be linked in with grains. But in the</p> <p>9 short term I think we have consistently</p> <p>10 indicated that it does not take much of a</p> <p>11 change in either the supply side or the demand</p> <p>12 side to dramatically affect that market.</p> <p>13 Do you see where it says that?</p> <p>14 A. Yes. Uh-huh.</p> <p>15 Q. Okay. And is that consistent with what</p> <p>16 he said on the first page, that one of the</p> <p>17 things contributing to the egg market at this</p> <p>18 time was the condensed supply of eggs in the</p> <p>19 egg market?</p> <p>20 MR. GREENE: Objection, lack of</p> <p>21 foundation. And I'll also point out on this</p> <p>22 line of questioning Mr. Westphal is speaking</p> <p>23 in his individual capacity.</p> <p>24 THE WITNESS: What he's saying here</p> <p>25 is that the supply and demand factor, the</p>
<p style="text-align: right;">Page 67</p> <p>1 Q. Okay. So what this paragraph is saying</p> <p>2 to the best of your knowledge is that another</p> <p>3 factor supporting high egg prices in the Urner</p> <p>4 Barry market is the short-term contraction of</p> <p>5 supply?</p> <p>6 A. A factor, yes.</p> <p>7 Q. Great.</p> <p>8 A. Uh-huh.</p> <p>9 Q. And if we can go a little further down</p> <p>10 the document to page 12.</p> <p>11 A. Okay.</p> <p>12 Q. I believe this is the question and answer</p> <p>13 session. Halfway down the page do you see</p> <p>14 where Mark Witmer is responding to a question?</p> <p>15 A. Yes. In the middle of the page?</p> <p>16 Q. Yes.</p> <p>17 A. Uh-huh.</p> <p>18 Q. And do you see where he says: Supply has</p> <p>19 been pressured through the animal well-being</p> <p>20 efforts I think by the industry.</p> <p>21 A. Just give me a moment to read the</p> <p>22 question if you would.</p> <p>23 Q. Sure. And you can read as much as you</p> <p>24 need in context, of course. Take your time.</p> <p>25 A. (Reviews document.) Okay.</p>	<p style="text-align: right;">Page 69</p> <p>1 economics of the egg market, a disruption in</p> <p>2 supply or a change in supply or a change in</p> <p>3 demand in a relative-type basis can have an</p> <p>4 economic impact on that market.</p> <p>5 BY MS. TURNER FRIEDMAN:</p> <p>6 Q. And in your own personal knowledge, do</p> <p>7 you recall that the animal welfare initiatives</p> <p>8 being discussed here were one of the primary</p> <p>9 contributors to that supply side change during</p> <p>10 this time period?</p> <p>11 A. It was one of the contributors.</p> <p>12 Q. That's all I have on that.</p> <p>13 (Exhibit Number 8 marked for</p> <p>14 identification.)</p> <p>15 BY MS. TURNER FRIEDMAN:</p> <p>16 Q. And I'll direct your attention -- I know</p> <p>17 you're not copied on the email. I'm more</p> <p>18 interested to know whether you've seen the</p> <p>19 attachment separate and apart from the cover</p> <p>20 email. And this document for the record is</p> <p>21 MFI0033973 through MFI0033975.</p> <p>22 A. (Reviews document.) I have not seen this</p> <p>23 document, no.</p> <p>24 Q. Okay. And I only have one question for</p> <p>25 you on this document. If you -- on page -- so</p>

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<p style="text-align: right;">Page 70</p> <p>1 the first page of the attachment, which is --</p> <p>2 ends in 33974.</p> <p>3 A. Okay.</p> <p>4 Q. Great. And I don't know if you want to</p> <p>5 take -- you're welcome to take the time to</p> <p>6 read the document. But what I just want to</p> <p>7 ask is -- that paragraph reads: The</p> <p>8 difficulty comes in meeting the phase-in</p> <p>9 schedule for the cage space allowance.</p> <p>10 Michael Foods said they currently have no</p> <p>11 customers asking for certified egg products,</p> <p>12 and they don't think the volume will ever be</p> <p>13 big among ingredient buyers and export</p> <p>14 accounts. They still believe that the program</p> <p>15 should be customer driven, but have recognized</p> <p>16 that they need to be a partner with the</p> <p>17 industry and encourage their customers to</p> <p>18 accept the program and its costs.</p> <p>19 Do you see that?</p> <p>20 A. I do.</p> <p>21 Q. And my only question for you is: Are you</p> <p>22 aware of any efforts taken by Michael Foods to</p> <p>23 encourage Michael Foods' customers to accept</p> <p>24 the UEP program and its costs?</p> <p>25 THE WITNESS: Can you read that</p>	<p style="text-align: right;">Page 72</p> <p>1 A. (Reviews document.) I'm not sure what</p> <p>2 year this is. But I've seen this form of</p> <p>3 document. It's one of the years of business</p> <p>4 conduct policies, which have tended to be</p> <p>5 relatively similar year over year.</p> <p>6 Q. I believe you mentioned earlier that you</p> <p>7 reviewed the current business conduct policy?</p> <p>8 A. I did. In detail I reviewed the current</p> <p>9 one.</p> <p>10 Q. So based on the current business conduct</p> <p>11 policy or your own personal knowledge, does</p> <p>12 Michael Foods have a formal antitrust policy?</p> <p>13 A. There is antitrust provisions within the</p> <p>14 business conduct policy, yes.</p> <p>15 Q. And the current antitrust provisions</p> <p>16 within the business conduct policy, what do</p> <p>17 those entail?</p> <p>18 A. It outlines compliance with antitrust</p> <p>19 laws. It outlines the expectations of an</p> <p>20 employee with dealings with competitors. It</p> <p>21 outlines expectations of employees relative to</p> <p>22 dealing with customers. And there's a fourth</p> <p>23 that's called fair dealings in all aspects of</p> <p>24 the business and what the expectations are for</p> <p>25 employees.</p>
<p style="text-align: right;">Page 71</p> <p>1 back.</p> <p>2 MS. TURNER FRIEDMAN: Okay.</p> <p>3 MR. GREENE: I'm going to object to</p> <p>4 it.</p> <p>5 But go ahead.</p> <p>6 (Whereupon, the court reporter read</p> <p>7 back the previous question.)</p> <p>8 MR. GREENE: I object to the form,</p> <p>9 lack of foundation and to the questioning on a</p> <p>10 document that the witness didn't -- doesn't</p> <p>11 recognize from somebody -- from another</p> <p>12 author, all of those objections.</p> <p>13 But go ahead.</p> <p>14 THE WITNESS: I am not aware of any</p> <p>15 instances to your question.</p> <p>16 BY MS. TURNER FRIEDMAN:</p> <p>17 Q. Okay. Thank you.</p> <p>18 MS. TURNER FRIEDMAN: Let's use</p> <p>19 Westphal 9.</p> <p>20 (Exhibit Number 9 marked for</p> <p>21 identification.)</p> <p>22 BY MS. TURNER FRIEDMAN:</p> <p>23 Q. This is MFI0053741 through MFI0053763.</p> <p>24 A. Okay.</p> <p>25 Q. Have you seen this document?</p>	<p style="text-align: right;">Page 73</p> <p>1 Q. Did you sign this when you became an</p> <p>2 employee of Michael Foods?</p> <p>3 A. Not just when you sign -- not when you</p> <p>4 become an employee. So this is an annual</p> <p>5 process that we go through with all of our</p> <p>6 employees that are salaried in nature or have</p> <p>7 supervisory responsibilities. So we have an</p> <p>8 annual process in place. It used to be</p> <p>9 manual, which you see in this document which</p> <p>10 you actually had to sign the last page, submit</p> <p>11 that with -- to HR. It would go into your</p> <p>12 file. Today we do that electronically. So</p> <p>13 it's done on an electronic basis where you are</p> <p>14 required to read, certify and report any</p> <p>15 instances that you have knowledge of relative</p> <p>16 to noncompliance with the business conduct</p> <p>17 policy.</p> <p>18 Q. Who would be included in salaried or</p> <p>19 supervisory employees to your knowledge?</p> <p>20 A. So salaried employee -- salaried</p> <p>21 employees. So --</p> <p>22 Q. Well, I guess my question is -- well, do</p> <p>23 the employees of M.G. Waldbaum Company sign</p> <p>24 the antitrust policy -- or the business</p> <p>25 conduct policy?</p>

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<p style="text-align: right;">Page 74</p> <p>1 A. Yeah. So we administer this as Michael 2 Foods. 3 Q. Okay. 4 A. So the business conduct committee today 5 is three corporate employees of Michael Foods. 6 It was -- I'm not sure who it was here. So 7 these would've been three corporate employees 8 of Michael Foods, including my predecessor as 9 part of that committee. And each of our -- so 10 it's administrated as Michael Foods through 11 the payroll -- HR department so that all 12 salaried employees regardless of what 13 organization they work for in Michael Foods 14 are required to sign off on that policy. 15 Q. Does the business conduct committee ever 16 hold any training programs with its -- with 17 Michael Foods' staff on these antitrust 18 requirements? 19 A. So the business conduct committee itself 20 is responsible for drafting the policy each 21 year, reviewing it, you know, making any 22 changes to the policy. The conduct committee 23 is responsible for oversight of that process 24 of certification from our employees. The 25 conduct committee also reviews any conflicts</p>	<p style="text-align: right;">Page 76</p> <p>1 Bates number ending in 757. 2 A. Okay. 3 Q. And I believe at the bottom of that page 4 is where the antitrust compliance section 5 starts? 6 A. That's correct. 7 Q. And if you go to the top of the next page 8 at 758, it says: If you engage in any conduct 9 or practice that may involve the antitrust 10 laws, you should be guided by this policy and 11 you should seek advice of company legal 12 counsel. 13 Do you know if any employees of Michael 14 Foods have ever sought advice of company legal 15 counsel with respect to UEP programs and any 16 antitrust concerns related to those programs? 17 A. I am not aware of any. 18 Q. And then on the next page, 759, on the 19 bottom of the first paragraph it says: If you 20 attend a trade association meeting and become 21 aware that competitors are discussing improper 22 subjects, you should leave the meeting 23 immediately and advise your superior and 24 company legal counsel. 25 Are you aware of anyone having advised</p>
<p style="text-align: right;">Page 75</p> <p>1 of interest or any of the things that come 2 back from employees. We review that and then 3 report that to our audit committee. The 4 specific training is not directed by the 5 business conduct committee. 6 Q. Is specific antitrust training conducted 7 by anyone else at Michael Foods? 8 A. Yes. Carrie Wolski, our general counsel, 9 has done training with our sales and marketing 10 organizations typically in conjunction with 11 their national sales meetings. And then we 12 have had an instance in my time at Michael 13 Foods some specific training relative to 14 Robinson-Patman that was done with senior 15 management of the company and senior sales 16 associates. 17 Q. Aside from signing the business conduct 18 policy on an annual basis, do Michael Foods' 19 employees have to verify in any other way that 20 they are not engaging in anticompetitive 21 behavior? 22 A. No. This is our process within the 23 company to annually confirm that folks are 24 complying with the policy. 25 Q. And if you could please turn to 7 -- the</p>	<p style="text-align: right;">Page 77</p> <p>1 their superior about concerns regarding UEP 2 meetings and antitrust concerns? 3 A. I am not aware of any. 4 Q. Are you aware of anyone advising legal 5 counsel about antitrust concerns regarding UEP 6 meetings? 7 A. I am not aware of any. 8 Q. I think that's all I have on that. 9 MS. TURNER FRIEDMAN: And then 10 we're at number 10. 11 (Exhibit Number 10 marked for 12 identification.) 13 BY MS. TURNER FRIEDMAN: 14 Q. This may be my last one. This is a 15 document with Bates numbers MFI0618320 ending 16 MFI0618321. And this is an email from Gregg 17 Ostrander dated September 23rd, 2008. 18 Do you recall receiving this email? 19 A. (Reviews document.) 20 Q. Take your time reading it, of course. 21 A. Uh-huh. I don't recall it specifically, 22 but obviously I was copied on it. 23 Q. If you look at the attachment, internal 24 statement re DOJ investigation into egg 25 product sales, about three lines in says: As</p>

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<p style="text-align: right;">Page 78</p> <p>1 you most likely know, in late March of this</p> <p>2 year we received subpoenas from the Department</p> <p>3 of Justice related to this matter.</p> <p>4 I assume this -- well, are you familiar</p> <p>5 with subpoenas that Michael Foods received</p> <p>6 from the Department of Justice related to the</p> <p>7 egg industry?</p> <p>8 MR. GREENE: It's a yes-or-no</p> <p>9 question.</p> <p>10 THE WITNESS: Yes.</p> <p>11 BY MS. TURNER FRIEDMAN:</p> <p>12 Q. Are you aware of any changes to Michael</p> <p>13 Foods' antitrust policies that occurred</p> <p>14 following the receipt of those subpoenas?</p> <p>15 A. No.</p> <p>16 Q. Are you aware of any changes to Michael</p> <p>17 Foods' antitrust policies following this</p> <p>18 lawsuit?</p> <p>19 A. Which lawsuit?</p> <p>20 Q. The lawsuit -- sorry. The lawsuit that</p> <p>21 you're testifying in, the civil litigation</p> <p>22 involving antitrust claims for the eggs</p> <p>23 products industry -- egg products industry.</p> <p>24 MR. GREENE: Can you ask the</p> <p>25 question again?</p>	<p style="text-align: right;">Page 80</p> <p>1 MS. TURNER FRIEDMAN: I have no</p> <p>2 further questions on behalf of the Direct</p> <p>3 Purchaser Plaintiffs at this time.</p> <p>4</p> <p>5 EXAMINATION</p> <p>6</p> <p>7 BY MR. ESSENMACHER:</p> <p>8 Q. Good morning.</p> <p>9 A. Good morning.</p> <p>10 Q. My name is Keith Essenmacher. I</p> <p>11 represent the Indirect Purchasers in this</p> <p>12 action. And as I said on the break, I'm going</p> <p>13 to try to be brief.</p> <p>14 A. All right.</p> <p>15 Q. Okay. Has Michael Foods conducted any</p> <p>16 independent studies or analysis on retail</p> <p>17 pricing of shell eggs?</p> <p>18 A. No.</p> <p>19 Q. Okay. Has Michael Foods conducted any</p> <p>20 independent study or analysis based on</p> <p>21 demographics for purchasing habits of shell</p> <p>22 eggs demographics being economics, you know,</p> <p>23 that sort of thing?</p> <p>24 MR. GREENE: I'll allow the witness</p> <p>25 to answer. But I just want to point out it's</p>
<p style="text-align: right;">Page 79</p> <p>1 MS. TURNER FRIEDMAN: I can.</p> <p>2 BY MS. TURNER FRIEDMAN:</p> <p>3 Q. Are you aware of any changes in Michael</p> <p>4 Foods' antitrust policies as a result of</p> <p>5 Michael Foods having been named as a defendant</p> <p>6 in this lawsuit related to claims of antitrust</p> <p>7 violations in the egg products industry?</p> <p>8 MR. GREENE: Objection to the</p> <p>9 characterization of the lawsuit.</p> <p>10 Go ahead.</p> <p>11 THE WITNESS: I am not.</p> <p>12 BY MS. TURNER FRIEDMAN:</p> <p>13 Q. Okay.</p> <p>14 MS. TURNER FRIEDMAN: I think that</p> <p>15 might be all I have. So if we could just take</p> <p>16 a few minutes of a break just to make sure</p> <p>17 that's the case. I may have a couple more</p> <p>18 questions. But if not, I'll pass it along.</p> <p>19 THE VIDEOGRAPHER: We are going off</p> <p>20 the record.</p> <p>21 The time now is 10:43.</p> <p>22 (Recess.)</p> <p>23 THE VIDEOGRAPHER: We are back on</p> <p>24 the record.</p> <p>25 Time now is 10:57.</p>	<p style="text-align: right;">Page 81</p> <p>1 not a topic on the list. He's answering in</p> <p>2 his individual capacity.</p> <p>3 THE WITNESS: Sorry. Can you</p> <p>4 repeat the question.</p> <p>5 BY MR. ESSENMACHER:</p> <p>6 Q. Has Michael Foods conducted any</p> <p>7 independent study or analysis on demographic</p> <p>8 purchasing habits of shell eggs?</p> <p>9 A. Of shell eggs?</p> <p>10 Q. Yes.</p> <p>11 A. No.</p> <p>12 Q. Okay. Does Michael Foods consider the</p> <p>13 retail price when setting the wholesale price</p> <p>14 for shell eggs? Is that one of the factors in</p> <p>15 setting the wholesale price?</p> <p>16 A. Our price to the retailer is formulaic,</p> <p>17 so it's on a formula.</p> <p>18 Q. Okay. And is the retail price, is that</p> <p>19 any kind of consideration, what the retail</p> <p>20 price will be?</p> <p>21 A. We don't have any -- the retailer sets</p> <p>22 the ultimate price to the consumer. We have a</p> <p>23 formula price as to how we sell it into the</p> <p>24 retailers' warehouse.</p> <p>25 Q. Thank you. And this is more of a general</p>

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<p>1 question: Does demand for eggs change when</p> <p>2 the wholesale price changes?</p> <p>3 MR. GREENE: Well, again, we're off</p> <p>4 topic. So at this point all the questions as</p> <p>5 to Mr. Westphal here are in his individual</p> <p>6 capacity not on behalf of the company. And at</p> <p>7 some point we're going to need to cut this</p> <p>8 off. But I'll let him answer.</p> <p>9 THE WITNESS: We've not done any</p> <p>10 elasticity studies relative to shell eggs at</p> <p>11 retail, which would answer your question.</p> <p>12 MR. ESSENMACHER: Thank you. To</p> <p>13 shut this off, that was my final question. I</p> <p>14 have no further questions.</p> <p>15 MR. MALYSIAK: No questions for the</p> <p>16 Direct Action Purchasers.</p> <p>17 MR. GREENE: We'll read and sign.</p> <p>18 THE VIDEOGRAPHER: This concludes</p> <p>19 today's deposition.</p> <p>20 The time now is 11:00.</p> <p>21 (Deposition concluded at</p> <p>22 11:00 a.m.)</p> <p>23 *****</p> <p>24</p> <p>25</p>	<p>1 ACKNOWLEDGMENT OF DEPONENT</p> <p>2 I, MARK WESTPHAL, do hereby certify</p> <p>3 that I have read the foregoing transcript of my</p> <p>4 testimony taken on 4/10/14, and further certify</p> <p>5 that it is a true and accurate record of my</p> <p>6 testimony (with the exception of the corrections</p> <p>7 listed below):</p> <table border="1"> <thead> <tr> <th>8 Page</th> <th>Line</th> <th>Correction</th> </tr> </thead> <tbody> <tr><td>9</td><td></td><td></td></tr> <tr><td>10</td><td></td><td></td></tr> <tr><td>11</td><td></td><td></td></tr> <tr><td>12</td><td></td><td></td></tr> <tr><td>13</td><td></td><td></td></tr> <tr><td>14</td><td></td><td></td></tr> <tr><td>15</td><td></td><td></td></tr> <tr><td>16</td><td></td><td></td></tr> <tr><td>17</td><td></td><td></td></tr> <tr><td>18</td><td></td><td></td></tr> <tr><td>19</td><td></td><td></td></tr> <tr><td>20</td><td></td><td></td></tr> <tr><td>21</td><td></td><td></td></tr> </tbody> </table> <p>22 MARK WESTPHAL</p> <p>23 SUBSCRIBED AND SWORN TO BEFORE ME</p> <p>24 THIS ____ DAY OF _____, 20__.</p> <p>25 (NOTARY PUBLIC) MY COMMISSION EXPIRES:</p>	8 Page	Line	Correction	9			10			11			12			13			14			15			16			17			18			19			20			21		
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<p>1 REPORTER'S CERTIFICATE</p> <p>2 STATE OF MINNESOTA )</p> <p>3 ) ss.</p> <p>4 COUNTY OF HENNEPIN )</p> <p>5 I hereby certify that I reported the</p> <p>6 deposition of Mark Westphal on April 10, 2014 in</p> <p>7 Minneapolis, Minnesota, and that the witness was by</p> <p>8 me first duly sworn to tell the whole truth;</p> <p>9 That the testimony was transcribed by me</p> <p>10 and is a true record of the testimony of the</p> <p>11 witness;</p> <p>12 That the cost of the original has been</p> <p>13 charged to the party who noticed the deposition,</p> <p>14 and that all parties who ordered copies have been</p> <p>15 charged at the same rate for such copies;</p> <p>16 That I am not a relative or employee or</p> <p>17 attorney or counsel of any of the parties, or a</p> <p>18 relative or employee of such attorney or counsel;</p> <p>19 That I am not financially interested in the</p> <p>20 action and have no contract with the parties,</p> <p>21 attorneys, or persons with an interest in the</p> <p>22 action that affects or has a substantial tendency</p> <p>23 to affect my impartiality;</p> <p>24 That the right to read and sign the</p> <p>25 deposition transcript by the witness was reserved.</p> <p>WITNESS MY HAND AND SEAL THIS 10th day of</p> <p>April, 2014.</p> <p>Dana S. Anderson-Linnell</p> <p>Notary Public, Hennepin County, MN</p> <p>My commission expires 1/31/2015</p>	<p>Page 83</p>																																										

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